

1 JULIE DARBELLAY,

2 No. C 05-05199 WHA

3 Plaintiff,

4 v.

5 JOHN E. POTTER, in his official capacity as
6 Postmaster General,7 **ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT, AND
VACATING HEARING**

8 Defendant.

9
10 **INTRODUCTION**11 In this employment-discrimination action, defendant John E. Potter, postmaster general,
12 moves for summary judgment on all plaintiff's claims. Plaintiff has failed to present a prima
13 facie case to support her discrimination claim. Plaintiff has presented no evidence to show that
14 she was fired for any unlawful reason. Thus, there remain no triable issues of fact in plaintiff's
15 claim. Accordingly, defendant's motion for summary judgment is **GRANTED**. The hearing on
16 this motion scheduled for February 8, 2007, is hereby **VACATED**.17
18 **STATEMENT**19 Plaintiff *pro se* Julie Darbellay, a Hispanic female, began work as a casual mail handler
20 for the United States Postal Service on February 28, 2004 (Kim Decl. Exh. 4, 14:16-22,
21 40:14-24, 101:7-8). She was 50 years old when she began work. Her job duties included
22 unloading mail from mail trucks at the Embarcadero Postal Center, bringing the mail to the
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1 appropriate mail carriers, and straightening up her work area before leaving (*id.* at 33:9–34:24).
2 Darbellay held a temporary position; her shifts and hours of work necessarily varied with the
3 Postal Service’s needs and the volume of mail received on any given day.

4 Plaintiff’s complaint is directed at Glorvies Deguzman, her supervisor while working at
5 the Postal Service. Darbellay testified at her deposition that Deguzman was very stern and
6 demanding towards her in the workplace (*id.* at 45:8–19). Also Deguzman would not
7 acknowledge plaintiff’s presence in the morning when she arrived, and when she did speak to
8 plaintiff, she would sometimes yell at her or address her in a loud voice (*id.* at 47:7–49:3).
9 Darbellay stated that Deguzman created “a hostile environment” because “she had a [sic] angry
10 way about her. She was not pleasant to be around” (*id.* at 49:8–9). Darbellay also testified that
11 Deguzman was angry and unpleasant toward both men and women and people of different ages
12 and races (*id.* at 69:14–71:2). Darbellay stated that she did not know if she was terminated
13 because of her age, race or gender (*id.* at 100:14–20, 102:6–10; 103:9–13). She did state that
14 Deguzman treated some other employees in a more friendly manner than Darbellay, including
15 “Judy,” a clerk, Larry Frost, the manager of the Embarcadero Postal Station, and Warren Lo, a
16 supervisor, one other unnamed person who worked nearby (*id.* at 97:21–99:10). Accordingly to
17 Darbellay, Deguzman was more friendly to Filipino postal employees, specifically another
18 unnamed supervisor (*id.* at 95:20–96:23).

19 Plaintiff was terminated from the Postal Service on April 1, 2004. The reasons cited
20 were her poor job performance, her demeanor toward other employees, and her resistance to
21 changes in her work schedule (Deguzman Decl. ¶ 6). A varying work schedule was part of
22 plaintiff’s job as a casual mail handler. Deguzman reported that Darbellay would not follow
23 directions. Because plaintiff would sometimes walk away while Deguzman was speaking to
24 her, she often had to repeat instructions several times (*ibid.*). Plaintiff also argued with her
25 supervisors and fellow employees (*ibid.*). Deguzman recommended terminating plaintiff to
26 manager Larry Frost (*ibid.*).

27 On July 2, 2004, plaintiff filed an Equal Employment Opportunity complaint alleging
28 discrimination based on national origin, gender, and age (Kim Decl. Exh. 4, Dep. Exh. G). It

1 was dismissed on March 22, 2005, and the dismissal was affirmed by the EEOC on September
2 21, 2005. Darbellay filed this action on December 15, 2005 alleging that she was terminated
3 because of her race and age. Plaintiff stated in her deposition that she was also discriminated
4 against on the basis of her gender and national origin.

5 Defendant's counsel served requests for admission and interrogatories on plaintiff by
6 mail on September 21, 2006 (Kim Decl. Exhs. 1, 3). Her responses were originally due no later
7 than October 25, 2006. Defendant's counsel agreed to extend the deadline to November 7, then
8 to November 28, and finally to December 8, 2006. Plaintiff never responded, nor did she
9 provide initial disclosures, notice any depositions, or serve any written discovery requests.
10 Plaintiff did write a letter to the Court styled as a "request for necessary information and
11 contacts from people within the U.S.P.S." on November 3, 2006. Defendant turned over the
12 requested information to plaintiff to the extent that it believed the information to be not
13 privileged.

14 Defendant filed this motion for summary judgment on December 22, 2006, and noticed
15 it for a hearing on January 25, 2007. Plaintiff did not file an opposition to the motion. Instead,
16 the parties stipulated to continue the hearing to February 8, 2007. The request was granted.
17 Despite this, plaintiff protested that she was "not allowed" to contact people within the Postal
18 Service and that the hearing should be continued to March 2007, the month for which plaintiff
19 believed the hearing was originally scheduled. Discovery was closed on November 24, 2006,
20 and trial was set for April 2, 2007.

21 ANALYSIS

22 Under FRCP 56(c), summary judgment should be granted where the pleadings,
23 discovery, and affidavits show "that there is no genuine issue as to any material fact and that the
24 moving party is entitled to judgment as a matter of law." The moving party has the initial
25 burden of production to demonstrate the absence of any genuine issue of material fact. *Playboy*
26 *Enterprises, Inc. v. Netscape Communications Corp.*, 354 F.3d 1020, 1023–24 (9th Cir. 2004).
27 Once the moving party has met its initial burden, the nonmoving party must "designate specific
28 facts showing there is a genuine issue for trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24

1 (1986). “If the moving party shows the absence of a genuine issue of material fact, the non-
2 moving party must go beyond the pleadings and ‘set forth specific facts’ that show a genuine
3 issue for trial.” *Leisek v. Brightwood Corp.*, 278 F.3d 895, 898 (9th Cir. 2002) (citation
4 omitted).

5 In the Ninth Circuit, “there is a high standard for the granting of summary judgment in
6 employment discrimination cases.” *Schnidrig v. Columbia Mach., Inc.*, 80 F.3d 1406, 1410 (9th
7 Cir. 1996). “[W]e require very little evidence to survive summary judgment” in a
8 discrimination case, because the ultimate question is one that can only be resolved through a
9 ‘searching inquiry’ – one that is most appropriately conducted by the factfinder, upon a full
10 record.” *Ibid.* (quoting *Lam v. University of Hawaii*, 40 F.3d 1551, 1563 (9th Cir. 1994)).

11 **1. PRIMA FACIE CASE OF DISCRIMINATION.**

12 To establish a prima facie case of discrimination under Title VII, the plaintiff is required
13 to show that:

14 (1) she belongs to a protected class, (2) she was performing according to her
15 employer’s legitimate expectations, (3) she suffered an adverse employment action,
16 and (4) other employees with qualifications similar to her own were treated more
17 favorably.

18 *Bergene v. Salt River Project Agr. Imp. and Power Dist.*, 272 F.3d 1136, 1140 (9th Cir. 2001).

19 Plaintiff is a 50-year-old Hispanic female. Defendant does not dispute that as such, she
20 is a member of a protected class. As to the third prong, plaintiff was terminated from her
21 position as a casual mail handler which constitutes an adverse employment action.

22 For the second element, defendant presents evidence that Darbellay was not performing
23 her job up to legitimate expectations. When her supervisor would give her instructions,
24 Darbellay would walk away and the supervisor would have to repeat the instructions. She
25 resisted the fluctuations in her work schedule that accompanied her position as a casual mail
26 handler. She also would leave materials in her work area in an unsafe manner. Plaintiff has not
27 presented any evidence in response. At best, she has stated that she does not know why she was
28 fired. Even under the forgiving standard for summary judgment in employment-discrimination
cases, plaintiff has shown no evidence that she was performing up to her employer’s legitimate
expectations.

1 As to the fourth element of a prima facie case, plaintiff must identify employees who are
2 similarly-situated in all respects who were treated more favorably than she. *See Moran v. Selig*,
3 447 F.3d 748, 756 (9th Cir. 2006). In her deposition, plaintiff identified four people such
4 people. One of them, Judy, was a mail clerk, a different position than a casual mail handler.
5 Larry Frost was the plant manager of the Embarcadero Postal Center. Warren Lo was a
6 supervisor, as was the unnamed person at the next station. None of these people held positions
7 similar to plaintiff's. Accordingly, she has not shown other similarly-situated employees were
8 treated more favorably by Deguzman than she was. Plaintiff has failed to make out a prima
9 facie case, thus summary judgment for defendant is warranted.

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11 Plaintiff simply has not shown that she was terminated for any unlawful reason or that
12 her supervisor discriminated against her. Aside from her own allegations in the complaint,
13 Darbellay did not even testify that she was discriminated against on the basis of her race,
14 gender, age, or national origin. Additionally, the Postal Service has shown a legitimate, non-
15 discriminatory reason for terminating Darbellay’s employment. Darbellay argued with other
16 employees and her supervisor, resisted changes to her work schedule, and had difficulty
17 following directions. Plaintiff has not presented any evidence to the contrary, nor has she
18 presented any evidence that she was terminated for an unlawful reason.

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19 In short, plaintiff has not shown that she suffered any discriminatory employment
20 action. She testified that she did not recall her race, gender, age, or national origin ever being
21 mentioned while she worked for the Postal Service. Even taking all of her statements as true,
22 she has not presented any evidence that action was taken against her because of her protected
23 status. She merely testified that Deguzman was more pleasant to Filipino workers than she was
24 to plaintiff. This is not actionable under the law. Accordingly, defendant's motion for
25 summary judgment is **GRANTED**.

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2. PLAINTIFF'S FAILURE TO RESPOND TO WRITTEN DISCOVERY.

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Failure to respond to a request for an admission is automatically deemed an admission. Fed. R. Civ. P. 36(a). Here, defendant propounded requests for admission asking Darbellay to

1 admit that she was terminated because of her poor work performance and not for any unlawful
2 reason. She failed to respond, thus defendant argues that she is deemed to have admitted that
3 she was not terminated for any unlawful reason. This is true. In any event, plaintiff has failed
4 to make out her *prima facie* case of discrimination.

5 **CONCLUSION**

6 For all the above-stated reasons, defendant's motion for summary judgment is
7 **GRANTED**. This action is **DISMISSED**. Seeing that no further argument on this matter is
8 necessary, the hearing is **VACATED**. Plaintiff is advised that she may appeal this matter to the
9 Court of Appeals for the Ninth Circuit if she properly docket her appeal in accordance with
10 that court's rules within 30 days of the entry of judgment.

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12 **IT IS SO ORDERED.**

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14 Dated: February 6, 2007

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17 WILLIAM ALSUP
18 UNITED STATES DISTRICT JUDGE
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